

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HARDY INGRAM,

§

Petitioner,

§

04-40155

vs.

§ Civil Action No. _____

DAVID WINN, WARDEN,
FEDERAL MEDICAL CENTER
AYER, MASSACHUSETTS,§ PETITION FOR WRIT OF HABEAS CORPUS
BROUGHT PURSUANT TO 28 U.S.C. § 2241
(c)(3), AND AUTHORITY IN SUPPORT
THEREOF

Respondent.

§

NOW COMES petitioner, Hardy Ingram, appearing pro se, and files this petition for a writ of habeas corpus alleging that he is "actually innocent", and that such a writ should issue, in the interest of justice, pursuant to 28 U.S.C. § 2241(c)(3).

I. JURISDICTION.

Petitioner is a federal prisoner currently incarcerated within the District of Massachusetts. Petitioner's custodian (the Warden of the Federal Medical Center in Ayer, Massachusetts) is within the court's jurisdiction.

Furthermore, a federal prisoner can seek habeas corpus relief if not letting him do so would raise serious constitutional questions. See, Triestman v. United States, 124 F.3d 361, 377-79 (2nd Cir. 1997). Thus, petitioner's claim of **actual innocence** is precisely the type of claims reserved for habeas corpus, and the court should proceed to the merits of petitioner's claim.

II. PRELIMINARY STATEMENT.

On July 25, 2001, a federal grand jury sitting in the Northern District of Ohio (Eastern Division) returned a two-count indictment charging petitioner with, inter alia, possession of a controlled substance (cocaine base) with the intent to distribute same, in violation of 21 U.S.C. § 841(a)(1)(b)(1)(A).

Petition for Writ of Habeas Corpus,
Hardy Ingram v. David Winn, Warden,
August 13, 2004, Page Three.

III. STATEMENT OF FACTS.

In the interest of brevity, and judicial economy, only those facts essential to the claims advanced in this petition are set forth hereinafter.

On June 10, 1991, petitioner entered a plea of guilty in a state court to simple possession of bulk quantities of cocaine, in violation of ORC 2925.11. See, Exhibit "A" (Excerpts of plea proceedings in state court), annexed hereto. Additionally, on February 6, 1991, petitioner entered a guilty plea to a single count of an indictment charging him disjunctively with, inter alia, transportation of a controlled substance, or preparing such a controlled substance for transportation. See, Exhibit "B". These two state convictions were used by the U.S. District Court in the Northern District of Ohio (Hon. Lesley Wells, U.S.D.J.) to classify petitioner a "career offender", and to substantially increase his sentence of imprisonment. This was done without a meaningful objection from defense counsel. Moreover, in view of petitioner's direct appeal and Section 2255 motion waiver, as contained in the plea agreement, petitioner's actual innocence claim has not been reviewed on the merits.

Petitioner now claims that he is entitled to relief by way of a writ of habeas corpus, because he was denied effective assistance of counsel during the sentencing proceedings resulting in a complete miscarriage of justice (i.e., imposition of a recidivist enhancement provision for which he is "actually innocent") warranting judicial review, and redress.

THE STATE OF OHIO }
Cuyahoga County } SS. I. GERALD E. FUERST, CLERK OF
THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL
JOURNAL ENTRY CR-262020

NOW ON FILE IN MY OFFICE.

WITNESS MY HAND AND SEAL OF SAID COURT THIS 24th
DAY OF Sept A.D. 20 01

GERALD E. FUERST, Clerk

By Christ Jones Deputy

*trial pledge
sentences sheet
March 91
June 91*

STATE OF OHIO, }
CUYAHOGA COUNTY } SS. IN THE COURT OF COMMON PLEAS

STATE OF OHIO }
VS. } PLAINTIFF

HARDY INGRAM JR. }
DEFENDANT

TO-WIT: JUNE 10 MAY TERM, 19 91
NO. CR-262020 19 91

INDICTMENT TRAFFICKING IN DRUGS, POSSESS
CRIMINAL TOOLS

JOURNAL ENTRY

NOW COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE OF OHIO AND THE
DEFENDANT, HARDY INGRAM JR, IN OPEN COURT WITH HIS/HER COUNSEL PRESENT AND WAS
FULLY ADVISED OF HIS/HER CONSTITUTIONAL RIGHTS.

THEREUPON, SAID DEFENDANT RETRACTS HIS/HER FORMER PLEA OF NOT GUILTY
HERETOFORE ENTERED, AND FOR PLEA TO SAID INDICTMENT SAYS HE/SHE IS GUILTY OF
DRUG LAW, RC 2925.03, (F-3), AS CHARGED IN COUNT TWO OF THE INDICTMENT, WHICH
PLEA/PLEAS, ON THE RECOMMENDATION OF THE PROSECUTING ATTORNEY IS/ARE ACCEPTED
BY THE COURT.

ON RECOMMENDATION OF THE PROSECUTOR, COUNTS ONE AND THREE ARE NOLLED.
PRE-SENTENCE INVESTIGATION IS WAIVED.

THEREUPON, THE COURT INQUIRED OF THE DEFENDANT IF HE/SHE HAD ANYTHING TO
SAY WHY JUDGMENT SHOULD NOT BE PRONOUNCED AGAINST HIM/HER; AND HAVING NOTHING
BUT WHAT HE/SHE HAD ALREADY SAID AND SHOWING NO GOOD AND SUFFICIENT CAUSE WHY
JUDGMENT SHOULD NOT BE PRONOUNCED.

IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT THAT SAID DEFENDANT,
HARDY INGRAM JR, IS SENTENCED TO LORAIN CORRECTIONAL INSTITUTION FOR A TERM OF
EIGHTEEN (18) MONTHS, CONCURRENT TO ALL OTHER SENTENCES.

DEFENDANT HAVING SUBMITTED AFFIDAVIT OF INDIGENCY, MANDATORY FINE WAIVED.
PROPERTY AND CASH SIEZED VOLUNTARILY FORFEITED.

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LG 06/11/91 10:55

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JUN 17 1991 JUDGE

GERALD E. FUERST, CLERK
BY Christ Jones Dep.

TIMOTHY E MCMONAGLE

COPIES SENT TO:

☐ Sheriff
☐ Defendant

☐ Other Lorain m6-18-91
CPD m6-18-91

MONDAY MORNING SESSION, JUNE 10, 1991

THE COURT: For the record we are here on case number 262020 wherein the defendant, Hardy Ingram, Sharon Ingram and Patrick Houston are before the Court. On behalf of the State of Ohio, counselor.

MS. NAIMAN: Your Honor, thank you.

This is a four-count indictment; however, the fourth count does not concern the three defendants before us today, defendant A, Patrick Houston, defendant B, as in boy, Hardy Ingram, Jr., and defendant C, Sharon Ingram.

The first count alleges a violation of ORC 2925.03, possession of cocaine over bulk but under three times bulk.

There is also a furthermore clause in this particular count as to Sharon Ingram, that she did, on the 21st day of February, 1979, in Cuyahoga County, Common Pleas Court case number CR 39281, was convicted of trafficking in drugs in violation of 2925.03.

There is also a violent spec as to Patrick Houston.

Count two alleges a violation of drug

1 law, 2925.03, knowingly prepare to ship
2 cocaine.

3 Also in this count there is the
4 furthermore as to Sharon Ingram and the violent
5 spec as to Patrick Houston.

6 In the third count there is an
7 allegation of violation of ORC 2923.24,
8 possession of criminal tools; to-wit: Money
9 and a firearm. There is a violent spec as to
10 Patrick Houston.

11 Your Honor, after pretrial
12 negotiations and discussions with the
13 defendant's attorney in the particular case,
14 and with the understanding that there will be a
15 change in defendant's pleas forthcoming, the
16 state moves to amend the indictment as to
17 Patrick Houston by moving to nolle counts two
18 and three and moving to amend count one to
19 2925.11, possession of cocaine under bulk
20 amount. As part of this plea agreement
21 defendant also agrees to voluntarily forfeit
22 \$498 confiscated, waiving any hearing to same
23 as well as voluntarily forfeiting all property
24 forfeited during the execution of the search
25 warrant.

1 As to defendant Hardy Ingram, the
2 state wishes to amend the indictment by moving
3 to nolle count two and count three. Count one,
4 2925.11, is possession of cocaine, three times
5 bulk, carries with it mandatory 18 year
6 sentence.

7 MR. DOUGHTEN: That's 18 months.
8 Excuse me. She did say 18 years.

9 THE COURT: Yes.

10 MS. NAIMAN: Excuse me. As to
11 defendant C, Sharon Ingram --

12 THE COURT: You may have
13 already punished him by that.

14 MR. DOUGHTEN: Yes, Your Honor.

15 MS. NAIMAN: As to defendant
16 C, Sharon Ingram, the state wishes to amend the
17 indictment by moving to nolle counts two and
18 three and amending count one to 2925.11,
19 possession of cocaine, with a furthermore that
20 would make this a third degree felony
21 punishable by possible term of incarceration of
22 one, one and a half, two years, and a possible
23 fine up to but not exceeding \$5,000.

24 Your Honor, a fourth degree felony as
25 to Patrick Houston is punishable by possible

1 term of incarceration of six months, 12 months
2 or 18 months, and a possible fine of up to but
3 not exceeding \$2500.

4 As to Hardy Ingram, possession and
5 three times bulk carries with it a mandatory
6 fine of \$5,000 as well as the 18 months actual
7 incarceration.

8 As part of this plea agreement all
9 defendants voluntarily forfeit all property
10 confiscated during the course of the execution
11 of the search warrant and waive any hearing to
12 same.

13 This is the trial date. The two
14 detectives are here and are ready to go forward
15 and the state is ready to go forward today if
16 that's necessary.

17 There have been no threats or promises
18 made by me on behalf of this office in order to
19 induce the anticipated change in plea.

20 THE COURT: Okay.

21 Mr. Doughten, you are standing in for
22 Mr. Tittle as to Patrick Houston; is that
23 correct?

24 MR. DOUGHTEN: That's correct,
25 Your Honor.

EXHIBIT "B"

STATE OF OHIO
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO

VS.

HARDY INGRAM

PLAINTIFF

DEFENDANT

TO-WIT: MARCH 21 JANUARY TERM, 19 91
NO. CR-247944 19 91

INDICTMENT TRAFFICKING IN DRUGS, DRUG ABUSE

JOURNAL ENTRY

THE DEFENDANT HEREIN HAVING, ON A FORMER DAY OF COURT ENTERED A PLEA OF GUILTY TO TRAFFICKING IN DRUGS, RC 2925.03 (A) (2), AS CHARGED IN THE FIRST (1) COUNT OF THE INDICTMENT, WAS THIS DAY IN OPEN COURT WITH HIS/HER COUNSEL PRESENT. (DAVID DOUGHTEN FOR DEFENDANT; TOM WALTERS COURT REPORTER)

THEREUPON, THE COURT INQUIRED OF THE SAID DEFENDANT IF HE/SHE HAD ANYTHING TO SAY WHY JUDGMENT SHOULD NOT BE PRONOUNCED AGAINST HIM/HER; AND HAVING NOTHING BUT WHAT HE/SHE HAD ALREADY SAID AND SHOWING NO GOOD AND SUFFICIENT CAUSE WHY JUDGMENT SHOULD NOT BE PRONOUNCED.

IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT THAT SAID DEFENDANT, HARDY INGRAM, BE IMPRISONED AND CONFINED IN THE LORAIN CORRECTIONAL INSTITUTION FOR A TERM OF ONE (1) YEAR AND PAY THE COST OF THIS PROSECUTION FOR WHICH EXECUTION IS AWARDED.

DEFENDANT TO BE HELD IN COUNTY JAIL UNTIL APRIL 5, 1991 DUE TO PENDING CASE AND FURTHER ORDER OF THE COURT. DEFENDANT REMANDED TO CUSTODY.

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MAR 27 1991

BY GERALD E. FUERST DEP.

JUDGE

JOSE A VILLANUEVA

BC 03/25/91 15:00

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Sheriff 9

Defendant

Other Lorcain m 3.28.91

THE STATE OF OHIO Cuyahoga County	SS. I. GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL CRIMINAL JOURNAL ENTRY CR-247944	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS 24th	
DAY OF Sept. A.D. 2001	
GERALD E. FUERST, Clerk	
By Lisa A. Jones	Deputy

P R O C E E D I N G S

WEDNESDAY AFTERNOON SESSION, FEBRUARY 6, 1991

THE COURT: We're on the record in the State of Ohio versus Hardy Ingram, docket number CR-247944. Mr. David Doughton is here on behalf of the defendant, and Mr. Ronald James for the State of Ohio. My understanding is that a plea will be forthcoming.

MR. JAMES: Yes, your Honor. Your Honor, the defendant is charged in a two-count indictment: Count One is Preparation for Shipment, Cocaine, in violation of Revised Code Section 2925.03. It is a felony of the third-degree. Count Two is Drug Abuse, in violation of Revised Code Section 2925.11, and because the drug is Cocaine, it is a felony of the fourth-degree. Your Honor, we have complied with all of the Discovery requirements, and the file was reviewed by my Supervisor Mr. Ed Walsh.

I have been advised by Counsel that the defendant wishes to withdraw his previously-entered plea of not

✓ 1 guilty and plead guilty to the first-count, Preparation
2 for Shipment. Your Honor, that's a felony of the
3
4 third-degree, punishable by a possible definite
5 sentence of a year, year-and-a-half, two years in
6 prison, and a fine of not more than \$5,000; and,
7 there is also a provision that the \$5,000 fine be
8 included in the plea for the first-count. And, if
9 that's forthcoming, the State of Ohio would ask that
10 ✓ the Court accept it and (nolle count-two.) It is a
11 probationable offense.

12
13 THE COURT: Mr.
14 Doughton?

15 MR. DOUGHTON: Yes, your
16 Honor.

17 As stated by Mr. James, we have received Discovery
18 on this matter. I have been able to talk to Mr.
19 Ingram about the facts of the case. I do believe that
20 the plea fits the facts in this matter.

(M) ✓
21 He has been advised of all of his Constitutional
22 Rights. He also has been advised that there will be
23 a \$5,000 fine in this matter. He has indicated to
24 me that he will voluntarily waive those Rights and
25 enter the plea as stated by Mr. James.
(M) ✓